

Subject: Resolution #628 -- Authorizing
 The Execution of a Subscriber
 Services Agreement for Public
 Safety Testing

Dept. Origin: Police Department

Prepared by: Jennifer Robertson
 City Attorney's Office

For Agenda of: April 19, 2016

Exhibits: Resolution #602 with
 attached agreement

Proposed Council Action:

Pass Resolution #628.

Concurred by Mayor: _____

Approved/form by City Atty: 4-12-16/ 

Approved by _____ Director: _____

Approved by Department Head: _____

Initial & Date

INFORMATION / BACKGROUND

The City of Ruston has the need for pre-employment services when it recruits and hires new law enforcement officers. Public Safety Testing, Inc. ("PST") provides pre-employment testing services to police, fire, and other public safety agencies consistent with the State Civil Service Statutes.¹ These services include advertising and recruiting assistance, application processing, and administration of pre-employment written examinations and physical ability tests. In addition, PST will report the scores of applicants, with all information necessary for the City to place passing applicants upon its eligibility list, and ranks the candidates relative to other candidates. If needed PST will appear in civil service proceedings for the City to provide information regarding the validity of the testing process.

The City has contracted with PST for many years. The most recent one-year contract was approved a year ago under Resolution No. 602. This is a new one-year agreement to replace the expiring agreement. The City can choose when the agreement expires: at the end of 2016, or a three-year agreement which would expire in 2018. However, because the City budgets annually, the Chief is asking for approval for a one-year period. The agreement may be terminated prior to the expiration date with 60-days written notice.

Authorizing this contract will allow the City to continue to utilize Public Safety Training, Inc. for pre-employment screening for police hires.

¹ Chapters 41.08 and 41.12 RCW.

FISCAL CONSIDERATION

The cost for this service is \$548 annually per candidate for law enforcement officer testing (written and physical abilities) to be paid 25% quarterly when incurred. If the contract term is selected for three years, then the costs per candidate will be \$512 for 2016, \$524 for 2017 and \$536 for 2018. The costs of travel for appearing at any civil service proceeding, if needed, will also be billed to the City. Additional services may be utilized by the City as needed and billed in addition to the \$548/applicant fee.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Pass Resolution #628, including choosing the desired expiration date.

MOTION: I move to approve Resolution #628 authorizing the Mayor to execute the Subscriber Services Agreement with Public Safety Testing, Inc. and establishing an expiration date for the Agreement of December 31, [2016] [2018].

RESOLUTION NO. 628

**A RESOLUTION OF THE CITY OF RUSTON,
WASHINGTON, AUTHORIZING THE MAYOR TO
EXECUTE A SUBSCRIBER SERVICES AGREEMENT
WITH PUBLIC SAFETY TESTING, INC. FOR PRE-
EMPLOYMENT SERVICES FOR LAW ENFORCEMENT
RECRUITING AND TESTING.**

WHEREAS, the City of Ruston has the need for pre-employment services when it recruits and hires new law enforcement officers; and

WHEREAS, Public Safety Testing, Inc. (“PST”) provides pre-employment testing services to police, fire, and other public safety agencies consistent with the State Civil Service Statutes;¹ and

WHEREAS, the City has contracted with PST for these services for many years; and

WHEREAS, it was recently discovered that the City’s contract with PST expired in 2011, so a new contract is needed to continue to utilize these services; and

WHEREAS, the City Council finds it in the best interests of Ruston to enter into a Subscriber Services Agreement with PST for these police recruitment and testing services, a copy of which is attached to this Resolution as Exhibit “A”; **NOW, THEREFORE,**

THE CITY COUNCIL OF THE CITY OF RUSTON HEREBY RESOLVES AS FOLLOWS:

Section 1. Agreement Authorized. The City Council hereby authorizes the Mayor to execute the Subscriber Services Agreement with Public Safety Testing, Inc. in substantially the form attached hereto as Exhibit “A”

¹ Chapters 41.08 and 41.12 RCW.

PASSED by the City Council of the City of Ruston, signed by the Mayor and attested by the City Clerk in authentication of such passage on this 19th day of April, 2016.

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

FILED WITH THE CITY CLERK: 4-12-2016
PASSED BY THE CITY COUNCIL: _____
RESOLUTION NO.: 628

EXHIBIT “A”

**PUBLIC SAFETY TESTING, INC.
SUBSCRIBER SERVICES AGREEMENT**



SUBSCRIBER AGREEMENT

WHEREAS, Public Safety Testing, Inc. is a skilled provider of pre-employment testing services to police, fire, and other public safety agencies, and

WHEREAS, the subscriber public agency, either directly or through a civil service commission, tests, evaluates, ranks and hires law enforcement and/or firefighters and/or other public safety positions in the performance of its public safety functions, and

WHEREAS, the subscribing public entity desires to join in a Subscriber Agreement, NOW, THEREFORE,

Public Safety Testing, Inc. (the "Contractor") and the City of Ruston, a municipal corporation of the state of Washington (hereinafter "Subscriber") do enter into this Subscriber Agreement under the terms and conditions set forth herein.

SUBSCRIBER: City of Ruston, WA

POSITIONS: Law Enforcement Officer (entry-level)
 Law Enforcement Officer (lateral/experienced)
 Firefighter
 Firefighter/Paramedic
 Corrections Officer (entry-level)
 Corrections Officer ((lateral/experienced)
 911 Dispatcher / Telecommunicator

COMMENCEMENT DATE: January 1, 2016

FEE & TERM:
 Select one-year or three-year subscription

One year subscription at the following rates (this agreement expires December 31, 2016):

One Year	Law Enforcement Officer	Corrections Officer	Firefighter	911 Dispatcher / Telecommunicator
2016	\$548	N/A	N/A	N/A

or

Three year subscription at the following rates (this agreement expires December 31, 2018):

Three Years	Law Enforcement Officer	Corrections Officer	Firefighter	911 Dispatcher / Telecommunicator
2016	\$512	N/A	N/A	N/A
2017	\$524	N/A	N/A	N/A
2018	\$536	N/A	N/A	N/A

OUT OF REGION TESTING

➤ *Select one*

SUBSCRIBER authorizes candidates who reside outside of the Pacific Northwest to take the written examination in their region. The physical ability test, if required, must be conducted by SUBSCRIBER (or SUBSCRIBER coordinates with candidate to be tested at a scheduled PST event), within 90 days of the written exam (6 months for FF CPAT).

SUBSCRIBER **does not** authorize out-of-region testing.

1. Description of Basic Services. This Agreement begins on the date as noted on page one (1) of this Agreement. The Contractor will provide the following services to the Subscriber:

- 1.1 Advertising and recruiting assistance, application processing, and administration of pre-employment written examinations and physical ability tests for those positions noted on Page One (1) of this Agreement.
- 1.2 Report to the Subscriber the scores of applicants, with all information necessary for the Subscriber to place passing applicants upon its eligibility list, and rank them relative to other candidates on appropriately constituted continuous testing eligibility lists. Contractor will report "raw" test scores to the Subscriber – no preference points will be factored into applicant scores and it is the Subscriber's responsibility to factor veteran's preference points in accordance with applicable federal and state laws. Written examination scores will be reported to the Subscriber as a percentage score (based on 100%) and physical ability test scores will be reported as "Pass" or "Fail". The passing score for written examinations is set by the test developer at 70%.
- 1.3 Appear in any administrative or civil service proceeding in order to testify to and provide any and all necessary information to document the validity of the testing process, to participate in the defense of any testing process conducted by the Contractor pursuant to this Agreement and to otherwise provide any information necessary to the Subscriber to evaluate challenges to or appeals from the testing process. The Contractor shall appear without additional charge. The Subscriber shall pay the reasonable cost of travel and appearance for any expert witness deemed necessary by the Subscriber to validate the testing process, including but not limited to, representatives of any company which holds the copyright to any testing material and whose testimony or appearance is deemed necessary to validate the process.

Provided, however, Contractor shall not be required to appear at its cost nor to defend in any administrative or court proceeding arising from or out of a claim or challenge relating to Subscriber's use of other testing process(es) or out of Subscriber's attempt to establish multiple or blended eligibility lists for the same position based in whole or in part on other testing process(es). "Other testing process(es)" means any test or testing process other than those provided by the Contractor under this Agreement.

- 1.4 Term & Fees. The term of this agreement and the related professional fees are noted on page one (1) of this Agreement.
- 1.5 Payment. Subscriber shall pay an amount equal to twenty-five percent (25%) of the annual fee set forth above quarterly for services rendered in the previous quarter and for basic services including but not limited to, software relating to online application, advertising formats, previously advertised scheduling of test dates, model civil service rules, testing systems, as well as ongoing testing and recruitment, and any and all other work developed at the cost of the Contractor prior to or contemporaneous with the execution of this Agreement. Payment shall be made within 45 days of receipt of invoice.
 - 1.5.1 Direct Deposit (ACH Enrollment). Subscribers are encouraged to set up direct deposit (ACH enrollment) for their payments. There will be no additional fee for payments made using direct deposit (ACH enrollment).
 - 1.5.2 Credit Card. A three percent (3%) fee will be added at the time of payment to each payment made using a credit card. The purpose of such fee is to cover Contractor's credit card processing fees.
2. Additional Services. In addition to the services provided under this Agreement, the Subscriber may, at its sole discretion, elect to purchase additional services from the Contractor. Such services shall be requested by and contracted for pursuant to separate written agreement.
3. Acknowledgements of Subscriber. The Subscriber understands and acknowledges, and specifically consents to the following stipulations and provisions:
 - 3.1 Because applicable civil service law prohibits having multiple eligibility lists for the same class of hire, this Agreement is an exclusive agreement for these services.
 - 3.2 The written and physical agility scores of any applicant shall be valid for 15 months from the date of certification by the Contractor or 12 months from the date of placement upon the Subscriber's eligibility list, whichever first occurs, following the report of the Contractor, and rules compatible with continuous testing shall be adopted. The Subscriber shall review its applicable hiring processes, advertisements, personnel policies and civil service rules (as applicable) to ensure compliance with the provisions of this Agreement.
 - 3.3 An applicant may, in addition to the Subscriber's eligibility list, elect to have his/her score reported to and subject to placement on the eligibility list of any other Subscriber. Nothing in this Agreement shall be interpreted to prohibit the use of an applicants' score for consideration in or processing through any other subscriber's hiring and/or civil service eligibility process. The Subscriber agrees that if an applicant is hired by another agency through this service, the applicant's name shall be removed from Subscriber's eligibility list.
 - 3.4 The Subscriber specifically understands and acknowledges that the Contractor may charge a reasonable application fee from any and all applicants.

- 3.5 The Subscriber is encouraged to and may also conduct advertising as it deems necessary to support/enhance recruiting efforts. The Subscriber shall link PublicSafetyTesting.com on its agency's website, if it so maintains one.
- 3.6 Public Safety Testing views recruiting as a partnership with the Subscriber. The Subscriber agrees to actively participate in recruiting efforts for positions within the Subscriber agency.
- 3.7 The Subscriber agrees to keep the Contractor up-to-date as to the agency's hiring status, minimum and special requirements, all information appearing on the agency's PST website profile and the names of any candidates hired through these services.
- 3.8 If the Subscriber elects for the Contractor to conduct physical ability testing for firefighter candidates, the Subscriber agrees to complete a Candidate Physical Ability Test (CPAT) validity transportability study and successfully apply to the International Association of Firefighters (IAFF) for a CPAT License. The one-time fee for the validity transportability study is \$750. If the Subscriber is currently CPAT licensed, the Subscriber agrees to maintain a valid CPAT license throughout the term of this agreement.
4. Testing Standard and Warranty of Fitness for Use. All testing services conducted under this Agreement shall be undertaken in accordance with the provisions of the Washington State Civil Service Statutes, Chapter 41.08 and/or 41.12 and/or 41.14 RCW, or the terms of other applicable statute as the Subscriber shall notify the Contractor that the Subscriber must meet. Tests shall also be conducted in accordance with the general standards established by the Subscriber; the Subscriber shall be responsible for notifying the Contractor of any unusual or special process or limitation. The test utilized, the proctoring of the test and any and all other services attendant to or necessary to provide a valid passing or failing score to the Subscriber shall be conducted in accordance with generally accepted practice in the human resources, Civil Service and Public Safety Testing community. The Subscriber may monitor the actions and operations of the Contractor at any time. The Contractor shall maintain complete written records of its procedures and the Subscriber may, on reasonable request, review such records during regular business hours. Any and all written materials, and the standards for physical fitness testing utilized, shall comply with all applicable copyrights and laws. The Contractor expressly agrees and warrants that all tests and written materials utilized have been acquired by the Contractor in accordance with the appropriate copyright agreements and laws and that it has a valid right to use and administer any written materials and tests in accordance with such agreements and laws. If Subscriber uses or authorizes the use of other testing process(es) this warranty shall be null and void.
5. Independent Contractor. The Contractor is an independent contractor. Any and all agents, employees or contractors of the Contractor, shall have such relation only with the Contractor. Nothing herein shall be interpreted to create an employment, agency or contractual relationship between the Subscriber and any employee, agent or sub-contractor of the Contractor.

6. Indemnity and Hold Harmless. The parties agree and hold harmless each other, their officers, agents and employees in accordance with the following provisions:

6.1 The Contractor shall indemnify and hold harmless the Subscriber, its employees and agents from any and all costs, claims or liability arising from:

6.1.1 Violation of any copyright agreement or statute relating to the use and administration of the tests or other written materials herein provided for;

6.1.2 Any cost, claim or liability arising from or out of the claims of an employee, agent or sub-contractor to the end that the Contractor shall be an independent Contractor and the Subscriber shall be relieved of any and all claims arising from or relating to such employment relationships or contracts between the Contractor and third parties;

6.1.3 The alleged negligent or tortious act of the Contractor in the provision of services under this Agreement.

6.1.4 This indemnity shall not apply to any administrative or court proceeding arising from or out of any process in which the Subscriber has utilized or authorized other testing process(es).

6.2 The Subscriber shall indemnify and hold harmless the Contractor, its officers, agents and employees from any and all cost, claim or liability arising from or out of the alleged negligent or tortious act of the Subscriber in the provision of services hereunder.

7. Termination. This agreement terminates as noted in the *Fee & Term* section on Page 1 of this Agreement. The Contractor and/or the Subscriber may also withdraw from this Agreement at any time for any reason with 60 days written notice, provided, however, that the provisions of paragraphs 1.3, 4, 5 and 6 shall remain in full force and effect following the termination of this Agreement with respect to, and continuing for so long as any applicant tested by the Contractor remains on the eligibility list of the Subscriber.

7.1 If the Subscriber elects to terminate this Agreement prior to the termination date specified in section 7, Subscriber shall pay the Contractor an early termination fee. The purpose of this early termination fee is to cover the direct and indirect costs of refunding and or rescheduling applicants that had signed up to test for the Subscriber. The early termination fee is one-third (33%) of the annual subscriber fee as noted in Section 1.4 of this Agreement. The early termination fee is in addition to any other fees agreed to by this Agreement. *Section 7.1 does not apply to multi-year subscriptions with 90 day termination notice.*

8. Entire Agreement, Amendment. This is the entire Agreement between the parties. Any prior agreement, written or oral, shall be deemed merged with its provisions. This Agreement shall not be amended, except in writing, at the express written consent of the parties hereto.

This Agreement is dated this _____ day of _____, 2015.

CITY OF RUSTON, WA

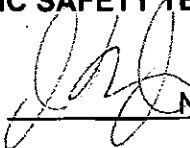
By: _____
 Print: _____
 Its: _____
 Contact: _____
 Address: _____
 City/State/Zip: _____
 Telephone: _____
 Email: _____

Subscriber's Contact & Address for Billing:

(Please complete if different from contact information above)

Contact: _____
 Title: _____
 Agency: _____
 Address: _____
 City/State/Zip: _____
 Telephone: _____
 Email: _____

PUBLIC SAFETY TESTING, INC.

By:  November 18, 2015
 Print: Jon F. Walters, Jr.
 Its: President
Jon Walters
20818 – 44th Ave. W., Suite 160
Lynnwood, WA 98036
425.776.9615
jon@publicsafetytesting.com

Agency Recruiter:

Name: _____
 Title: _____
 Email: _____

Agency Hiring Representative/Supervisor:

Name: _____
 Title: _____
 Email: _____

Chief or Agency Director:

Name: _____
 Title: _____
 Email: _____